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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,247	12/16/2004	Makoto Yagisawa	1017-006	6685

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EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/518,247	YAGISAWA, MAKOTO	
	Examiner	Art Unit	
	Justin M. Larson	3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Caputi (US 2002/0008125 A1).

Regarding claim 1, Caputi discloses a shoulder belt (Figure 2) to be hung on a shoulder, the shoulder belt comprising a shoulder locking belt portion (91) to be hung on an upper surface of the shoulder and an upper arm locking belt portion (89) to be hung on an outer surface of an upper arm in a vicinity of a shoulder joint, wherein the shoulder locking belt portion and the upper arm locking belt portion are disposed in an intermediate portion of the shoulder belt and surround the shoulder joint (Figure 5).

Regarding claim 2, the shoulder locking belt portion and the upper arm locking belt portion of Caputi are connected at their tips (Figure 2) where the tips overlap and longitudinal central portions are laterally spaced from each other.

3. Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Bohanec (US 3,790,049 A).

Regarding claim 1, Bohanec discloses a shoulder belt (1), the shoulder belt comprising a shoulder locking belt portion (5) and an upper arm locking belt portion (7), wherein the shoulder locking belt portion and the upper arm locking belt portion are

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disposed in an intermediate portion of the shoulder belt. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Bohanec which is capable of being used in the intended manner, i.e., the shoulder locking belt portion being hung on an upper surface of a user's shoulder, the upper arm locking belt portion being hung on an outer surface of a user's upper arm in a vicinity of their shoulder joint such that the shoulder locking belt portion and the upper arm locking belt portion surround the user's shoulder joint. There is no structure in Bohanec that would prohibit such functional intended use (see MPEP 2111).

Regarding claim 5, the claim recites a process by which the shoulder belt is made. The resulting structure of this process is a shoulder belt consisting of two portions in the width direction of the belt. Because Bohanec discloses this resulting structure, a shoulder belt (1) consisting of two portions (5,7), the limitations of the claims are effectively satisfied. As set forth in MPEP 2113, "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

Regarding claim 6, the opening quantity of Bohanec between the shoulder locking belt portion and the upper arm locking belt portion is adjustable (via slides 23,27).

4. Claims 1, 5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Cable et al. (US 4,389,005 A).

Regarding claim 1, Cable et al. disclose a shoulder belt to be hung on a shoulder, the shoulder belt comprising a shoulder locking belt portion (80) to be hung on an upper surface of the shoulder and an upper arm locking belt portion (82) to be hung on an outer surface of an upper arm in a vicinity of a shoulder joint, wherein the shoulder locking belt portion and the upper arm locking belt portion are disposed in an intermediate portion of the shoulder belt and surround the shoulder joint.

Regarding claim 5, the claim recites a process by which the shoulder belt is made. The resulting structure of this process is a shoulder belt consisting of two portions in the width direction of the belt. Because Cable et al. discloses this resulting structure, a shoulder belt consisting of two portions (80,82), the limitations of the claims are effectively satisfied. As set forth in MPEP 2113, "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)

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Regarding claim 7, the shoulder belt of Cable et al. is attached to a baby carrier.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caputi as applied in paragraph 2 above.

The Caputi shoulder belt includes the claimed features, including the shoulder locking belt portion and the upper arm locking belt portion being formed by attaching an auxiliary belt at its ends onto one shoulder belt part. Caputi is silent to as to the auxiliary belt being attached to the shoulder belt using stitching. In fact, Caputi does not set forth any specific attachment means, however, Official Notice is taken to the fact that it is old and well known in the art to attach a strap member via its end portions to another strap member using stitching. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the auxiliary belt of Caputi to the shoulder belt of Caputi using stitching, since stitching is a well known attachment means for such straps.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caputi as applied in paragraph 2 above in view of Higuchi (US 5,934,528 A).

Regarding claim 3, the Caputi shoulder belt includes substantially the claimed features, including the connecting belts (89,91) being formed in an outward convex

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shape and in a sack shape (Figure 2 and 55), but excluding a pad on an inner part.

Higuchi, however, teaches that it is already known in the art to provide a pad (65) on the inner part of a shoulder strap. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include padding on the inner parts of the Caputi shoulder belt, as taught by Higuchi, since such padding would make the shoulder belt more comfortable for a user to wear.

Regarding claim 4, the Caputi shoulder belt includes substantially the claimed features, including the shoulder locking belt portion and the upper arm locking belt portion being formed by attaching an auxiliary belt (89) at its ends onto one shoulder belt part (91). Caputi is silent to as to the auxiliary belt being attached to the shoulder belt using stitching. Higuchi, however, teaches that it is already known to attach an auxiliary belt (90) to a shoulder belt (60) using stitching (col. 5 line 29). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the auxiliary belt of Caputi to the shoulder belt of Caputi using stitching, as taught by Higuchi, since stitching is a well known attachment means for such straps.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited art includes various shoulder strap configurations and carriers similar to that disclosed by Applicant.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER

JML1/12/07